



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

MAY 05 1992

MEMORANDUM

SUBJECT: Memorandum of Agreement (MOA) between the State of Mississippi and the United States Environmental Protection Agency

FROM: Ray Cunningham, Director
Water Management Division

TO: Greer Tidwell
Regional Administrator

Attached is the final negotiated MOA with the Mississippi State Oil and Gas Board regarding Class II well activities. The MOA has been voted on and approved by the board and signed by their supervisor.

Please sign both MOA's at your earliest convenience.

UNDERGROUND INJECTION CONTROL PROGRAM

AMENDED

MEMORANDUM OF AGREEMENT

BETWEEN THE STATE OF MISSISSIPPI

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

I. GENERAL

This Amended Memorandum of Agreement (AMOA) establishes policies, responsibilities and procedures for the State of Mississippi's Underground Injection Control (UIC) Program for Class II injection wells (State Program) as authorized by Section 1425 of Part C of the Safe Drinking Water Act, Pub. L. 93-523, as amended ("SDWA" or "the Act").

This Agreement is entered into by the State Oil and Gas Board of Mississippi and signed by the Supervisor of the State Oil and Gas Board of Mississippi (hereafter, "the State" or "Director"), with the United States Environmental Protection Agency, Region IV and signed by the Regional Administrator (here after "EPA" or "Regional Administrator"). The original Agreement became effective on the date the notice of State Program approval was published by EPA in the Federal Register (Vol. 54, No. 40 PP 8734-8735) on March 2, 1989. This AMOA shall become effective upon the signing by the Director and the Regional Administrator.

This AMOA supersedes the previous MOA between the State and EPA dated October 21, 1988. This Agreement may be modified upon the initiative of the State or EPA. Modifications must be in writing and must be signed by the Director and Regional Administrator.

The State shall administer the UIC program consistent with the State's original submission¹ and this AMOA, the SDWA, current Federal policies and regulations which are applicable to §1425, and any separate working agreements which shall be entered into between the State and the Regional Administrator as necessary for the full administration of the UIC program. The State's administration of the UIC program shall include implementation of all applicable Statewide Rules and Regulations.

For purposes of the State Program the terms "underground source of drinking water" (USDW) and "fresh water" may be used interchangeably. USDW shall be defined as an aquifer or its portion:

- (1)(i) which supplies any public water system: or
- (ii) which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. Currently supplies drinking water for human consumption; or
 - b. Contains fewer than 10,000 mg/l total dissolved solids, and
- (2) which is not an exempted aquifer.

Subsequent to program approval an aquifer or portion thereof, which would otherwise meet the definition of a USDW, may be exempted from protection under this program by the Director provided that: (1) the exemption is made in accordance with Sections 144.7 and 146.4 of the Federal UIC regulations, and (2) EPA, the Mississippi Department of Environmental Quality, and the Mississippi State Department of Health approves same.

The Mississippi State Oil and Gas Board will not knowingly grant an exception to any Rule or Order of the Board that will in any way endanger any USDW.

¹The State Program submission; for Primary enforcement responsibility includes: (1) a letter from the Governor requesting program approval; (2) a complete program description; (3) a statement of legal authority; (4) Memorandum of Agreement; and (5) copies of all applicable State statutes, regulations and forms.

This Agreement will remain in effect until such time as State primary enforcement responsibility is withdrawn by EPA, according to the provisions of 40 C.F.R. Part 145.34.

If the Administrator revises or amends any requirement of a regulation under Section 1421, the State may demonstrate that the State program meets the requirements of Section 1421(b), and represents an effective program under Section 1425(b). The State may make this alternative showing under Section 1425, but still must do this within 270 days after proper notice of such revision or amendment by the Administrator.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action pursuant to the SDWA.

II. SHARING OF INFORMATION

EPA shall inform the State within thirty (30) days of receipt of the issuance, and content of Federal statutes, regulations, guidelines, technical standards, policy decisions, directives, judicial decisions and any other factors which might affect the State program. The State shall inform EPA within thirty (30) days of receipt of any proposed or pending modifications to any Statewide Rule or regulations, guidelines, any judicial decisions or administrative actions and known proposed or pending modifications to laws which might affect the State Program and the State's authority to administer the program. The State shall submit copies of such revisions to EPA and within thirty (30) days, inform EPA of any resource allocation changes (e.g., personnel, budget, equipment, etc.) which might affect the State's ability to administer the program.

All information obtained or used in the administration of the State Program, including all UIC permit files and compliance files, shall be available to EPA upon request without restriction.

If information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing EPA such information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with 40 C.F.R. Part 2. If EPA obtains information from the State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

III. RESPONSIBILITIES

A. Program Operation

To assure protection of underground sources of drinking water, the Board agrees to take the following actions on new or newly converted injection wells if corrective action is needed on

wells in the area of review but cannot be accomplished by the operator due to different ownership of the wells involved:

1. Deny the permit, permit modification or other such authorization which may be requested of the Board; or,
2. Limit injection pressure(s) so as to prevent the movement of fluid into underground sources of drinking water.

The State will exercise its broad authority under Rule 63 Part 1:B to accomplish the following:

1. Require corrective action in any case where corrective action is needed to assure protection of an underground source of drinking water.
2. Limit the injection pressure of all wells to a pressure that will not exceed the calculated fracture pressure of the confining zone or cause any movement of fluids into any USDW.

Mechanical integrity tests for all Class II wells will be required as specifically described in Rule 63 Part 7.

In accordance with Rule 63 Part 3:C(2) the State may modify, revoke and reissue, or terminate a permit after notice and hearing, if information as to the permitted operation indicates that the cumulative effects on the environment are unacceptable, such as pollution of USDWs. For purposes of the UIC program, fluid migration into a USDW will be interpreted as having an unacceptable cumulative effect on the environment which shall result in modification, revocation and reissuance, or termination of permits.

The comment period for a public notice on a permit application shall be at least 20 calendar days.

The State shall examine each permit file at least once every five years. Such examination shall review the adequacy of financial responsibility, any new wells in the area of review, and the applicability of any new policies, rules, regulations or statutes. During these examinations, or earlier if an operator brings a petition concerning a permit file before the Board, the State shall determine and set a maximum injection pressure limitation for each of the State's permit files that do not already contain this restriction. The date and results of each examination shall be retained in the file.

When the Director has information that a well may be causing fluid movement into or between underground sources of drinking water, he will cause the well to be shut-in and/or take other action as necessary to prevent contamination of USDWs.

The amount of financial instruments established to assure the availability of funds to plug and abandon injection wells shall be based on estimates secured by the wells' owner/operator and confirmed by the State. The estimates shall be based on plugging and abandonment plans approved by the State. Funds received by the State pursuant to the financial responsibility requirements of Rule 63 shall be used for the express purpose of plugging and abandoning the specific injection wells for which the funds were received.

The State has developed criteria for analysis of financial statements and if any additional criteria is deemed necessary it shall be developed in conjunction with, and satisfactory to EPA and the criteria will be followed.

B. Compliance Monitoring

The Director shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. The compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions or UIC program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine the compliance or noncompliance with the issued permits, to verify the accuracy of the information submitted by the permittee in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring and other methods of providing the information.

The Regional Administrator has provided the State a listing of all wells which have been issued an EPA Class II permit. If the State certifies that the State permit has been reviewed and is in compliance with current State rules, regulations, and statutes, the Regional Administrator will review the EPA permit for compliance. If the operator is in compliance with the EPA permit, the Regional Administrator will terminate the EPA permit and so notify the State.

The State agrees to witness each year at least 75% of the mechanical integrity tests conducted on Class II wells.

The State shall retain records used in the administration of the program for three (3) years (40 C.F.R. Parts 30 and 35) and all mechanical integrity records for five years. In the event that an enforcement action is pending, all records pertaining to such action shall be retained until such action is resolved and three years thereafter.

C. Enforcement for Class II Operation

The State shall enforce the UIC Program in accordance with the enforcement procedures outlined in the program submission and any subsequent enforcement agreements. The State shall take timely and appropriate enforcement actions against any persons in violation of any UIC Program requirement. Violations which may endanger human health will receive immediate and paramount attention.

Inspectors shall report all UIC violations in writing to their immediate supervisor, who shall ensure appropriate follow-up enforcement actions.

In the event the State does not pursue enforcement of a UIC violation, the State shall, upon request, furnish EPA with all information, including but not limited to documents associated with such violation, and the State shall cooperate fully with any EPA investigation or enforcement of such violation. EPA will not take enforcement action without providing prior notice to the State and otherwise complying with Section 1423 of the SDWA.

EPA shall continue to handle the enforcement actions on all wells, permitted or otherwise, which are under an active EPA enforcement action as of the date of this Agreement. EPA shall continue with the enforcement actions on these wells until final resolution.

D. State Reports

The State shall submit a quarterly report on the operation of its Class II program to EPA. The reports will be prepared by the state on a quarterly basis and submitted to the Regional Office within thirty (30) days of the close of each quarter of the Federal fiscal year. The report shall contain the following forms or their contemporary equivalents:

1. EPA Form 7520-1, Part I: Permit Review and Issuance/Wells in Area of Review;
2. EPA Form 7520-2A, Part II: Compliance Evaluation;
3. EPA Form 7520-2B, SNC, Part II: Compliance Evaluation (The State will track and document SNC per Underground Injection Control Guidance #53);
4. EPA Form 7520-3, Part II: Inspection/Mechanical Integrity Testing;
5. EPA Form 7520-4, Part IV: Quarterly Exceptions List Report.

6. A brief narrative summary of enforcement actions taken.

The State shall submit the following reports annually, forty-five (45) days after the end of the Federal fiscal year:

1. An updated inventory of active injection facilities;
2. A narrative report consisting of a detailed description of the State's implementation of the UIC program.

E. EPA Oversight

EPA shall oversee the State's administration of the UIC program on a continuing basis to assure that such administration is consistent with the UIC program submission and all applicable requirements embodied in current regulations, policies and Federal law. EPA will conduct at least one on-site visit to the State's office annually to review program implementation with the Director and his staff.

EPA's annual performance evaluation on the State Program will consist of the following:

1. Review of implementation of the UIC workplan which includes review of resource allocations, meeting commitments and prompt submissions of required reports.
2. Review of State reports and other information supplied by the State to determine State Program consistency with SDWA, applicable regulations, guidance and policies.

EPA shall submit a summary of the evaluation findings, within forty-five (45) days of the visit, to the State outlining the strengths and deficiencies in program performance, and recommendations for improving State operations. The State shall have thirty (30) days from the date of receipt to concur with or comment on the findings and recommendations of the mid-year and end of year evaluations. In addition to the specific oversight activities listed in this section, EPA may, from time to time make written request and the State shall submit specific information and provide access to files necessary for evaluating the State's administration of the UIC program. The State reserves the right to negotiate with EPA on requests that would represent an adverse work load.

The State agrees to provide EPA with copies of the monthly Board docket. The State also agrees to provide EPA with the results of all Board decisions regarding injection wells.

EPA will provide technical assistance to the State on compliance, enforcement and emergency response, with the State taking the lead in such actions. However, nothing in this agreement shall restrict EPA's oversight authority and right to take unilateral enforcement action. EPA shall make reasonable effort to give due notice to the Director of any unilateral enforcement action.

EPA may conduct periodic site and activity inspections on injection operations, giving priority to operations having the greatest potential to endanger public health. EPA will notify the State in writing at least seven days before any such inspection and allow opportunity for the State to accompany EPA on any such inspection. However, if an emergency exists, or for some other reason it is impossible to give advance notification, EPA may waive advance notification to inspect a facility but shall make reasonable effort to contact the Director. In keeping with Section 1445(b)(2) of the Safe Drinking Water Act, the State agrees not to use such information to inform the person whose property is to be entered of the pending inspection. In addition, EPA may periodically accompany Director authorized state personnel during routine well inspections and participate in the performance of file reviews for compliance evaluation purposes.

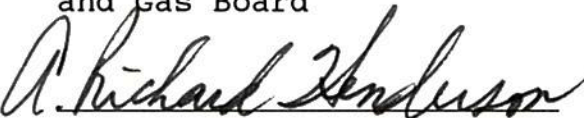
F. Emergency Action

The Director shall immediately notify the Regional Administrator by telephone, or otherwise, of any endangerment to public health resulting from the actual or threatened direct or indirect injection of fluids into the groundwater of the State.

IV. Signatures

Mississippi State Oil
and Gas Board

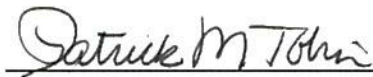
By



A. Richard Henderson
Supervisor

U.S. Environmental
Protection Agency

By



for Greer C. Tidwell
Regional Administrator

Date

15 April 1992

Date

May 5, 1992